Supreme Court, U.S.
FILED

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No _____

In the Supreme Court of the United States

Robert L. Voit, Petitioner

v.

Louisville and Jefferson County Board of Health; Michael Humprey; Robert Crabtree; Melinda G. Rowe; John Does; Jefferson County, Kentucky, Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

Petition for Writ of Certiorari

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Questions Presented for Review

1. The right to trial promised in the 6th Amendment to the United States Constitution implies that no one can be criminally punished for unwanted activity unless that activity is legally defined as a criminal offense and EVERY element of that offense is proved in court.

Is it constitutionally permissible for a regulatory agency to circumvent this requirement by defining a crime with fewer elements than the offense really entails (omitting the hard to prove elements), then selectively enforcing the offense only against those who also satisfy the unwritten element of the offense, making the agency's enforcement officer the judge of the unwritten elements?

This question occurs in the context of a municipal health code which says it is a crime to occupy a dwelling which is in disrepair, even though it appears the health department never prosecutes based on these elements alone, failing, for example, to prosecute the tenants of the slum landlords it convicts.

2. **May a federal district court entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud or deception?**

This question occurs in the context of the Court of Appeals Panel reversing the 6th Circuit's previous holding that such allegations of fraud created an exception to the *Rooker-Feldman* doctrine, and holding instead the *Rooker-Feldman* doctrine prevented the District Court from considering petitioner's complaint that he was the victim of the deception described in question 1.

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Opinions Below

The opinions below are unreported but, printed in appendix hereto. Said opinions and orders are:

District Court's Memorandum Opinion
District Court's Order - Judgment
District Court's Order Denying Rehearing
Circuit Court's Opinion - Order - Judgment
Circuit Court's Order Denying Rehearing
Petitioner's Complaint from District Court

Statement of Jurisdiction

Order sought reviewed: The Circuit Court's order (affirming the District Court's Judgment) was entered 9/27/2001.

Rehearing: An order extending the time in which to file a Petition for Rehearing En Banc until 10/25/2001 was entered 10/11/2001. Appellant's Petition for Panel Rehearing With Suggestion for Rehearing En Banc was filed 10/25/2001, and the Circuit Court's Order denying it was entered 1/7/2002.

Statue: Petitioner seeks this Court's review pursuant to 28 U.S.C. 1254(1).

Regulation and Constitutional Provision Involved

The United States Constitution Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The Louisville and Jefferson County Board of Health Sanitary Code, Chapter 8, Rule 4, Section 804.604:

> 804.604 Building Maintenance. No person shall occupy as owner-occupant or let to another for occupancy nor shall any person occupy any dwelling or dwelling unit for the purpose of living therein, which does not comply with the following requirements: (The section goes on in sub-sections (a) through (m) to define requirements.)

Statement of the Case

In this statement Petitioner will refer to the method of circumventing requirements of proving of all elements (described under Issue 1 on page 1) as a "proof shelter sham"

On 1/20/99 appellant herein filed a civil Complaint in the US District Court Western District of Kentucky alleging that he was a victim of a proof shelter sham which was used to secure his conviction (for violation of health code Chapter 8, Rule 4, Section 804.604) at a trial held 1/20/98-1/21/98 in Jefferson County, KY.

Petitioner/Plaintiff alleged that a health department regulation (making it a crime to occupy a dwelling with a maintenance defect) did not describe the behavior intended to be punished, but was instead part of a scheme whose purpose and function was to impose punishment on Petitioner without proving some of the elements the "true offense", i.e., of the behavior intended to be punished. Petitioner alleged that this "proof shelter" was a sham to circumvent the requirements of the 6th Amendment that EVERY element of an offense be proved at trial.

Plaintiff-appellant's claim relied primarily upon 2 issues:

(N1) A question of fact, whether the defendants' behavior constituted the use of a proof shelter sham; and

(N2) A question of law, whether the use of a proof shelter sham violates the 6th Amendment.

Defendants, in their Answer, denied both these claims and raised a number of affirmative defenses.

Both sides agreed that the case depended on issues of law, some of which might dispose of the case without discovery. The District Court agreed, and at a scheduling conference held 10/12/99, the Court decided that rather than set a schedule for discovery, it would first set a schedule for the presentation of preliminary dispositive motions. In response thereto each side filed its motion.

On 2/8/00 the District Court entered an ORDER and a "MEMORANDUM OPINION" dismissing the case with prejudice on the grounds that plaintiff failed to state a claim upon which relief may be granted, and on the grounds of the *Rooker-Feldman* doctrine. The Court did not mention or rely upon the claim preclusion or issue preclusion claims of defendants; and therefore appears to have rejected them. Also, the Court's opinion appears to hold, contrary to the factual allegations of plaintiff in N1 above, that the defendants' selective enforcement conduct was simply a matter of applying limited resources.

The District Court held that the conduct alleged by plaintiff (engineering and using a proof shelter sham) was not constitutionally forbidden because selective prosecution, a component of the shelter scheme, is not a forbidden process.

The District Court held that the *Rooker-Feldman* doctrine prevented federal jurisdiction because to prevail in the federal case Plaintiff would have to establish that the state court erred; however, the court would not say what error was implied, in spite of plaintiff's request (in motion for reconsideration) that the Court identify an issue essential to the federal case, which had been decided adversely by the state court.

After the District Court on 3/30/2000 denied plaintiff's motion for reconsideration, plaintiff, on 4/28/2000 filed a notice of appeal.

The parties filed their appellate briefs and thereafter, the Circuit Panel denied Petitioner's request for oral presentation.

The Circuit Court, on 9/27/2001, entered an order affirming the District Court's judgment on *Rooker-Feldman* grounds. The Circuit Court Panel recognized that Voit claimed his state court conviction was obtained by fraud and deceit, but held that in this Voit was raising a specific grievance that the state court wrongly decided issue(s) before it. The Circuit Panel did not identify what

specific state court error it believed to be implied by Voit's allegations of fraud and deceit.

Petitioner requested this and rehearing En Banc based on the fact that the Panel was reversing a previous decision (*Sun Valley Foods Company v. Detroit Marine Terminals, Inc.*, 801 F.2d 186,189 (6 Cir. 1988)) wherein the 6th Circuit held that a federal court may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud or deception.

The Circuit Panel on 1/7/2002 denied the motion for rehearing, and the petition herein results.

Federal jurisdiction in the court of first instance. The District Court had subject matter jurisdiction over Petitioners 42 U.S.C. 1983 case pursuant to 28 U.S.C. 1331, which provides for original district court jurisdiction over cases presenting federal questions. Jurisdiction is an issue in dispute based on the *Rooker-Feldman* doctrine.

REASONS FOR GRANTING THE WRIT

Importance of the right to a meaningful trial:

A fair and meaningful trial is one of the rights that distinguishes a free society. Any attack on that right has to be considered of great importance.

A proper treatment of proof shelter sham is also important because of the large number of citizens affected by this type scheme. The key to the proof shelter is that once you take something that is fairly common and not really illegal and make it a crime which you can punish at your whim, then you have nearly absolute power. Many citizens and business exist in fear of arbitrary bureaucrats who are able to threaten punishment without a fair trail because their agencies have regulations which create a similar proof shelter.

The reason Petitioner believes the courts below have erred in their understanding of this case is discussed below under the heading "The Proof Shelter Sham And How It Works".

Conflict with other decisions:

In *Sun Valley Foods Company v. Detroit Marine Terminals, Inc.*, 801 F.2d 186,189 (6 Cir. 1988) the Court held:

> "[1] There is, however, an exception to the general rule that precludes a lower federal court from reviewing a state's judicial proceedings. A federal court 'may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake .... ' *Resolute Insurance Co. v. State of North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968)."

The Circuit Court Panel in its opinion recognized (at the end of page 1) that: "Voit claimed that his conviction was obtained by fraud and deceit,...".

Having thus recognized the condition that creates an exception to *Rooker-Feldman*, the panel then, in the next few paragraphs, applied *Rooker-Feldman*, holding, in effect, that no exception exists. This is contrary to *Sun Valley*, and to other cases as discussed later below.

The biggest problem with the Panel's holding on *Rooker-Feldman* (if you believe the proof shelter sham to violate the right to a trial) is that it leaves no remedy for protecting the right to trial. The defense of petitioner depends upon establishing an issue of fact (not law) that the regulation in combination with the enforcement policies are a sham. The state court trial process doesn't provide for discovery, so the needed facts are not available for the trial and excluded from any Writ of Error that is based on the record below. It appears the only possible attack is collateral, which leaves habeas corpus and civil rights. Habeas corpus has weak discovery provisions and usually excludes fine only cases which this was. By interpreting *Rooker-Feldman* to exclude a civil rights action challenging extrinsic fraud, the courts below would completely separate the victim of a proof shelter sham from the protection of his rights in the courts.

THE PROOF SHELTER SHAM AND HOW IT WORKS

The right to trial promised in the 6th Amendment to the United States Constitution implies that no one can be criminally punished for unwanted activity unless that activity is legally defined as a criminal offense and every element of that offense is proved in court. But there is a method of circumventing this which is particularly easy when an agency has the power to both make and enforce regulations. We call this method the "**proof shelter sham**", and when stripped to its prototype, it works as follows:

a) An agency makes illegal an act committed by nearly everyone, and thus easily provable (the "**common act**").

b) This agency then selectively prosecutes individuals for commission of the common act; those targeted are persons they believe have committed another act which the agency considers undesirable (the "**unwanted act**").

In this manner an agency is able to select those it considers guilty of the unwanted act, and without putting them on trial for the unwanted act, without proving in a court of law that they have committed the unwanted act, it is able to impose punishment through the process of prosecuting for the common act.

This process has the form of a legal proceeding but in substance, as practiced, it is a sham that punishes without trial. The term "proof shelter" is used in analogy with tax shelter cases where the trier of fact is asked to look beyond the form to the substance of the transactions to determine whether or not the requirements of law have been evaded. And a proof shelter, like a tax shelter, works best when its complexity obscures its nature and true purpose.

The proof shelter sham creates the illusion of a trial.

Our constitution specifies the process of a trial for determining whether to impose punishment for an unwanted activity. What the health department has done is to create an alternate process, but embed within it the trial process as a sub-component, and this creates the illusion of a proper trial. The department decides whether

you're guilty of the unwanted activity, and if so prosecutes you for its sham offense. A real court properly following constitutional procedures without error correctly finds that your have indeed committed the common act which is defined as a crime. If you don't consider and understand the context in which the real court is functioning, you might easily believe the normal procedure has been followed.

The use of a proof shelter sham prosecution is prohibited by the 6th Amendment right to trial.

Proof: If the use of a proof shelter sham were not forbidden by the 6th Amendment, then the methods of sham could be used in regard to any offense (any unwanted act), at any time, against any person, to punish that person without proving the elements of the offense, thus rendering the protection promised by the 6th Amendment meaningless. (An assumption here, one that underlies most legal analysis, is that the Constitution was intended to make meaningful promises.)

An Example

If an example helps, imagine a traffic cop without a radar gun or speedometer. If he thinks you're going too fast, you are prosecuted for driving a motor vehicle. There is a law that says it's illegal to operate a motor vehicle (with or without a drivers license). No one ever gets a ticket simply because he's driving a motor vehicle (doing what the law defines as a crime). Officials didn't want motorists challenging an officer's speed estimates, so they made driving "illegal" and instructed the officer to cite only speeders. This is differs considerably from the example of randomly selected speeders given in the District Court's opinion.

The Sham has 2 Components

The proof shelter sham alleged by plaintiff/peititioner has 2 components, (a) the publication of the "common act offense", a regulation/offense which falsely describes actual public policy, and (b) the selective enforcement of that offense. The District Court's opinion focuses on the "b" component, thinking in terms of the case law from traditional selective enforcement cases, but ignoring the consequence of the "a" component. It is instructive to consider

the traditional attack on selective enforcement, to see how when carefully analyzed, the case law leads to the same conclusion plaintiff-appellant has reached.

Comparison With Traditional Selective Prosecution Thinking

The traditional attack on selective prosecution reasons through several steps.

1. Observe the underlying selective nature of the prosecution and conclude that because government normally forgoes the chance to prosecute the offense, it is unlikely that the law or regulation accurately defines the behavior that the government intends to punish.
2. Conclude (from 1 and other evidence) that the substance of the government's criminal prosecution is an effort to punish some other activity.
3. Identify the activity the government intends to punish (the "unwanted act").
4. Show that the punishment of the "unwanted act" (for example free speech) is forbidden by law.
5. Conclude that the prosecution is wrongful because its substance is to impose punishment forbidden by law.

The 6th Amendment Simplifies the Elements of the Case

Steps 3 and 4 of the traditional approach are needed only because those plaintiffs chose to plead violation of 14th Amendment equal protection, 1st Amendment free speech, or something similar.

With different pleading the steps 3 and 4 are unnecessary. Once we've gone through step 2 of the reasoning, we know that the government is seeking to punish some act, other than the one charged. If that other act is not a criminal offense it may not be lawfully punished. If it is a criminal offense, punishment may not be imposed unless that offense is charged and every element thereof is proven at trial. **When the substance of the proceeding is punishment of activity other than that charged, this other activity necessarily falls into one of these two categories and its punishment is forbidden.** Punishment of an act not criminal or of

a offense not charged and proven is forbidden by the 6th Amendment right of trial. By pleading the protection of the 6th Amendment this plaintiff more directly establishes the constitutional violation he suffers and the corresponding cause of action under 42 USC 1983.

Applying 6th Circuit Case Law

In in *Futernick v. Sumpter Township*, 78 F.3d 1051 (6th Cir. 1996), a case cited by the District Court, this Court at 1056 has stated the rule which the applies here:

> "Selective enforcement can also lead to § 1983 liability if the plaintiff pleads 'purposeful discrimination' intended to accomplish some forbidden aim."

Appellants point, ignored by the District Court, is that "punishment of an act not criminal or of a offense not charged" is a forbidden purpose, forbidden by the 6th Amendment.

CONFLICTING OPINIONS REGARDING THE *ROOKER-FELDMAN* DOCTRINE

The 6th Circuit's Panel's holding regarding the *Rooker-Feldman* doctrine conflicts with the 6th Circuit's prior decision, with the decision of another Circuit and with decision of the Supreme Court as explained below:

In *Sun Valley Foods Company v. Detroit Marine Terminals, Inc.*, 801 F.2d 186,189 (6 Cir. 1988) the Court held:

> "[1] There is, however, an exception to the general rule that precludes a lower federal court from reviewing a state's judicial proceedings. A federal court 'may entertain a collateral attack on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake .... ' *Resolute Insurance Co. v. State of North Carolina*, 397 F.2d 586, 589 (4th Cir. 1968)."

In *Sun Valley* the court cites *Resolute Insurance Co. v. State of North Carolina,* 397 F.2d 586, 589 (4th Cir. 1968) and that case cites *Wells Fargo Co v. Taylor*, 254 U.S. 175 (1920) which in turn

cites *Marshall v. Holmes*, 141 U.S. 589 (1891) where the Court gives its reasoning in some detail at 599:

> "'In such cases, the court does not act as a court of review, nor does it inquire into any irregularities or errors of proceeding in another court; but it will scrutinize the conduct of the parties, and, if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it.'
>
> ...
>
> "These authorities would seem to place beyond question the jurisdiction of the Circuit Court to take cognizance of the present suit, which is none the less an original, independent suit, because it relates to judgments obtained in the court of another jurisdiction. While it cannot require the state court itself to set aside or vacate the judgments in question, it may, as between the parties before it, if the facts justify such relief, adjudge that Mayer shall not enjoy the inequitable advantage obtained by his judgments. A decree to that effect would operate directly upon him, and would not contravene that provision of the statute prohibiting a court of the United States from granting a writ of injunction to stay proceedings in a state court. It would simply take from him the benefit of judgments obtained by fraud."

The court's reasoning in *Marshall* above is applicable to the case now before the court. Plaintiff's seeks compensation for the damage resulting from Defendants' fraud. By the reasoning of *Sun Valley* and *Marshall* the district court can grant such relief without impermissibly overturning state court proceedings.

CONCLUSION

Normally the purpose of a criminal prosecution is to impose punishment for the offense which is charged. When this is not the case the proceedings are a sham serving to unlawfully punish some other activity in violation of the 6th Amendment right to trial.

APPENDIX

(entered February 8, 2000)
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:99CV-P41-H

ROBERT L. VOIT PLAINTIFF

V.

LOUISVILLE AND JEFFERSON COUNTY
BOARD OF HEALTH, et al. DEFENDANTS

MEMORANDUM OPINION

Plaintiff has filed a complaint asserting that his Sixth Amendment constitutional rights to trial and perhaps other constitutional rights were violated in the process of his conviction in Jefferson District Court for occupying dilapidated housing. The substance of Plaintiff's complaint is to challenge the results of his criminal conviction in Jefferson District Court. Plaintiff says that his conviction was obtained by fraud and deceit, and only after a violation of his constitutional rights. However, that conviction was affirmed by the Jefferson Circuit Court. Thereafter, Plaintiff appealed to the Kentucky Court of Appeals which denied his motion for discretionary review. Ultimately, the Kentucky Supreme Court also denied his motion for discretionary review. Now using 42 U.S.C. § 1983 as the vehicle of this complaint, Plaintiff challenges all the proceedings which have occurred in state court.[1]<1>

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[1]Plaintiff has also filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. That case is styled *Robert L. Voit v. Kevin W. Delahanty*, 99CV-644-H. In that Petition, Voit sets forth the same facts and circumstances as here. This opinion does not address the merits Voit's habeas corpus claims.

Plaintiff argues that his Sixth Amendment rights were violated when he was convicted of occupying a dwelling in disrepair in violation of the local health code. Plaintiff describes the offense for which he was convicted as a "sham offense", arguing that no one is ever prosecuted under the offense unless they fail to complete repairs within a reasonable period of time. Plaintiff describes the real offense as containing three elements: (1) occupying, (2) disrepair, and (3) failure to complete repairs within a reasonable amount of time. Plaintiff claims that the only reason that the law does not explicitly require a reasonableness component is to evade the constitutional necessity of proving that the repairs had not been completed in a reasonable amount of time.[2] In spite of the code's wording, Plaintiff claims that the only punishable conduct is failure to complete repairs of an occupied dwelling within a reasonable amount of time. Plaintiff contends that the Health Department impermissibly achieves this end through selective enforcement of the two element sham offense.

Plaintiff does not cite a single case to support his position that this type of selective enforcement constitutes a violation of the Sixth Amendment. In fact, this type of selective enforcement has never been viewed as such a violation.[3] Prosecutorial discretion can lead to unequal treatment, but courts have repeatedly viewed this discretion as necessary. See *Wayte v.*<2>*U.S.*, 470 U.S. 598, 607 (1985) (prosecutors have broad discretion in determining

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[2]Plaintiff asserts that the Sixth Amendment requires prosecutors to prove each element of a claim against a defendant. Plaintiff claims Defendants impermissibly circumvent this requirement by defining a crime with fewer elements than the offense really entails, then only enforcing the offense against those who also satisfy the unwritten element of the offense.

3 [3]Courts have repeatedly recognized that selective enforcement is an appropriate means to effectively utilize limited resources. Selective enforcement is only impermissible when the decision to enforce is based on membership in a protected group or exercise of a constitutionally protected right. See *Futernick v. Sumpter Township*, 78 F.3d 1051, 1056 (6th Cir. 1996); *U.S.v. Anderson*, 923 F.2d 450, 453 (6th Cir. 1998); *Schehl v. Comm 'r of Internal Revenue Serv.* 855 F.2d 364, 367 (6th Cir. 1988).

whom to prosecute). Plaintiff's argument is no stronger than the driver who, when pulled over by a police officer for speeding, attempts to evade a fine by arguing that other cars were going just as fast or that he was only going five miles over the speed limit. While the Court may sympathize with Plaintiffs position, it cannot classify this type of selective enforcement as a constitutional violation. Plaintiffs claim must be dismissed because it fails to state a claim upon which relief can be granted.

More importantly, perhaps, even if Plaintiff's claim described a constitutional injury, this Court could not entertain it under 42 § U.S.C. 1983 after state courts had rejected similar claims in a state criminal conviction. The *Rooker-Feldman* doctrine provides that "federal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are 'inextricably intertwined with the state court's [decision] in a judicial proceeding.'" *Blake v. Papadakos*, 953 F.2d 68, 71 (3rd Cir. 1992) (quoting *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n. 16 (1983); see also *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). When a plaintiff seeks to litigate a claim in federal court, the existence of a state court judgment in another case bars the federal proceeding under *Rooker-Feldman* when entertaining the federal claim would be the equivalent of an appellate review of the order. See *Catz v. Chalker*, 142 F.3d 279, 293 (6th Cir. 1998). For that reason, *Rooker-Feldman* applies only when an order to grant the federal plaintiff the relief sought, the federal court must determine that the state court judgment was erroneously entered or must take action that would render that judgment ineffectual. See id.; *Marks v. Stinson*, 19 F.3d 873,886 (3rd Cir. 1994); *Charchenko v. City of Stillwater*, 47 F.3d 981,983 (8th Cir. 1995); *FOCUS v. <3>Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3rd Cir. 1996).

In our case, Plaintiff's claim is strikingly similar to the claims rejected by the state courts in Plaintiff's prior proceedings. In order to succeed Plaintiff would need to convince this Court that the state's highest court was mistaken and that the original state court judgment was erroneously or improperly entered. Each of the arguments which Plaintiff raises in this case are virtually the same as

those raised on the appeal of his state court conviction through the Kentucky Supreme Court. The only difference seems to be that in the instant case Plaintiff argues that Defendants used fraud, deceit and conspiracy to violate his constitutional rights. The addition of these allegations does not alter the essential nature of the case, however. To win this case, Plaintiff must convince this Court to reach conclusions which are the opposite of those already rendered by several Kentucky courts in which Plaintiff was a party. To do so would run counter to the doctrine set forth in the *Rooker* and *Feldman* cases.

Having thoroughly reviewed the complaint and the competing memorandum, the Court concludes that there are a number of sound reasons why Plaintiff's 42 U.S.C. § 1983 complaint is an inappropriate method of challenging his state court conviction and the proceedings which occurred in that court. Plaintiffs habeas corpus petition remains unaffected by this opinion and order.

The Court will enter an order consistent with this Memorandum Opinion.

JOHN G. HEYBURN,
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record
<4>

(entered February 8, 2000)
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:99CV-P41 -H

ROBERT L. VOIT PLAINTIFF

V.

LOUISVILLE AND JEFFERSON COUNTY
BOARD OF HEALTH, et al. DEFENDANTS

ORDER

Plaintiff, Robert Voit, has filed a complaint under 42 U.S.C. § 1983. Defendants argue that Plaintiffs complaint fails to state a claim upon which relief may be granted. Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Defendants' motion to dismiss is SUSTAINED and Plaintiff's Complaint under 42 U.S.C. § 1983 is DISMISSED WITH PREJUDICE.

This is a final and appealable order.

This 8th day of February, 2000.

JOHN G. HEYBURN,
JUDGE, U.S. DISTRICT COURT

cc: Counsel of Record

(entered March 30, 2000)
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:99CV-P41-H

ROBERT L. VOIT PLAINTIFF

V.

LOUISVILLE AND JEFFERSON COUNTY
BOARD OF HEALTH, et al. DEFENDANTS

ORDER

Plaintiff has moved the Court to reconsider its order granting summary judgment to Defendants. The Court has reviewed the motion and Defendants' response. Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's motion to reconsider is DENIED.

This 30th day of March, 2000.

JOHN G. HEYBURN,
JUDGE, U.S. DISTRICT COURT

cc: Robert L Voit, Pro Se
Fred M. Goldberg/Mary Alice Maple
I. G. Spencer, Jr.

(entered September 27, 2001)
No. 00-5585

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT L. VOIT,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
LOUISVILLE AND JEFFERSON COUNTY BOARD OF HEALTH; MICHAEL HUMPHREY; ROBERT CRABTREE; MELINDA G. ROWE; JOHN DOES; JEFFERSON COUNTY, KENTUCKY,	)	
	)	
Defendants-Appellees.	)	
	)	

Before: BATCHELDER and COLE, Circuit Judges; BECKWITH, District Judge.*

This pro se litigant appeals a district court judgment dismissing his complaint filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Seeking monetary damages, injunctive relief, and attorney's fees, Robert L. Voit sued the Louisville and Jefferson County (Ky.) Board of Health, Jefferson County, three employees of the board (Michael Humprey, Robert Crabtree, and Melinda G. Rowe, M.D.) and a host of "John Doe" employees in their individual and

*The Honorable Sandra S. Beckwith, United States District Judge for the Southern District of Ohio, sitting by designation.

official capacities. In essence, Voit challenged the results of his criminal conviction in Jefferson District Court for occupying dilapidated housing in violation of Chapter III, Rule 4 of the Louisville and Jefferson County Board of Health Sanitary Code. Voit claimed that his conviction was obtained by fraud and deceit, and that the offense for which he was <1> convicted is a "sham offense" because no one is prosecuted under the offense unless they fail to make complete necessary repairs within a reasonable period of time. Voit argued that he was the subject of "selective enforcement" of the sham offense in violation of his rights under the Sixth Amendment.

The district court dismissed Voit's complaint pursuant to the doctrine set forth in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413,415-16 (1923). Voit appeals.

Upon de novo review, we conclude that the district court properly dismissed Voit's complaint for lack of subject matter jurisdiction. Under the *Rooker-Feldman* doctrine, federal courts lack jurisdiction to review a case litigated and decided in state court as only the United States Supreme Court has jurisdiction to correct state court judgments. *Feldman*, 460 U.S. at 483 n.16; *Rooker*, 263 U.S. at 415-16; *Patmon v. Michigan Supreme Court*, 224 F.3d 504, 506-07 (6th Cir. 2000). Federal courts also lack jurisdiction to review constitutional claims that are inextricably intertwined with the state court's decision. *Feldman*, 460 U.S. at 486-87; *Patmon*, 224 F.3d at 509-10. A plaintiff's claims are inextricably intertwined with the state court's decision if the federal claims can succeed only to the extent that the state court wrongly decided the issues before it, *Catz. v. Chalker*, 142 F.3d 279, 293 (6th Cir. 1998), and if the federal claims assert specific challenges to the state court proceedings, rather than a general challenge to the constitutionality of the state law. *Patmon*, 224 F.3d at 509-10; *Catz*, 142 F.3d at 293.

A fair reading of the complaint reveals that Voit merely disagrees with the manner in which he was found guilty of occupying dilapidated housing, and Voit's complaint in this action asserts claims against the persons and entities involved in the prosecution of the sanitary code violations. Since Voit is merely raising spe-

cific grievances regarding decisions of Kentucky's district court, his federal case is essentially an impermissible appeal of the state court judgment.<2>

Accordingly, all outstanding motions are hereby denied, and the district court's judgment is affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit, for the reasons set forth in the district court' s memorandum opinion of February 8, 2000.

ENTERED BY ORDER OF THE COURT

_____

Clerk

(entered January 7, 2002)
No. 00-5585
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT L. VOIT,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
LOUISVILLE AND JEFFERSON COUNTY BOARD OF HEALTH; ET AL.,	)	
	)	
Defendants-Appellees.	)	

Before: BATCHELDER and COLE, Circuit Judges; BECKWITH, District Judge.*

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

*Hon. Sandra S, Beckwith, United States District Judge for the Southern District of Ohio, sitting by designation.

(filed 1/20/99)
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
No. *3:99CV-P41-H*

COMPLAINT

Plaintiff:
Robert L. Voit
c/o David S. O'Brien
539 W Market St, 4th Fl
Louisville, KY 40202

v.

Defendants:
Louisville and Jefferson County Board of Health
serve: Mason C. Rudd
Chairman, Health Dept.
3 Riverfront Plaza, #320
Louisville, KY 40202

Jefferson County Kentucky
serve: Rebecca Jackson
County Judge/Executive
527 W Jefferson
Louisville, KY 40202

Michael Humphrey, individually and in his official capacity as an employee of the Louisville and Jefferson County Board of Health
serve: Michael Humphrey
Louisville & Jefferson County Health Department
400 E Gray St
Louisville, KY 40201

Robert Crabtree, individually and in his official capacity

as an employee of the Louisville and Jefferson County Board of Health
serve: Robert Crabtree
Louisville & Jefferson County Health Department
400 E Gray St
Louisville, KY 40201

Milinda G. Rowe, M.D., individually and in her official capacity as an employee of the Louisville and Jefferson County Board of Health
serve: Melinda G. Rowe, M.D., MBA/MPH
Director of Health Services<1>
Louisville & Jefferson County Health Department
400 E Gray St
Louisville, KY 40201

JON DOE'S 1-100, individually and in their official capacities as employees or agents of the Louisville and Jefferson County Board of Health

Part 1 - INTRODUCTION/OVERVIEW

Plaintiff asserts that persons Humphrey and Crabtree, acting under the color of law and regulation in the state of Kentucky caused the plaintiff, a person within the jurisdiction of the United States, to be subjected to the deprivation of the right to trial secured by the 6th Amendment and through the 14th Amendment of the Constitution of the United States. They did so through a scheme of selective enforcement of a regulation; said scheme being a sham designed and implemented by them and/or others at the health department. In accordance with Section 1983 of Title 42 of the United States code, plaintiff brings this action in law to hold defendants liable for his injuries. The nature of the sham, the manner in which the defendants used it to deprive the plaintiff of his right, and the compensation sought for injury is detailed below.

Part 2 - EXPLANATION OF THE SHAM

The right to trial promised in the 6th Amendment to the United State Constitution implies that no one can be criminally punished

for unwanted activity unless that activity is legally defined as a criminal offense and every element of that offense is proved in court. But there is a method of circumventing this which is particularly easy when an agency has the power to both make and enforce regulations. We call this method the <2> administrative sham, and when stripped to its prototype, it works as follows:

a) An agency makes illegal an act committed by nearly everyone, and thus easily provable (the "common act").
b) This agency then selectively prosecutes individuals for commission of the common act; those targeted are persons they believe have committed another act which the agency considers undesirable (the "unwanted act").

In this manner an agency is able to select those it considers guilty of the unwanted act, and without putting them on trial for the unwanted act, without proving in a court of law that they have committed the unwanted act, it is able to impose punishment through the process of prosecuting for the common act.

This process has the form of a legal proceeding but in substance, as practiced, it is a sham that punishes without trial. In discussing shams of this type, plaintiff will refer to the common act offense as the "sham offense."

Part 3 - JURISDICTION AND VENUE

1. Jurisdiction. This is a civil action arising under 42 U.S.C. 1983, a law of the United States and therefore pursuant to 28 U.S.C. 1331, the district courts of the United States have original jurisdiction. The district courts also have original jurisdiction in this case by virtue of 28 U.S.C. 1343(a)(3)&(4).

2. Venue. This action is not founded on diversity of citizenship and one of the defendants (Louisville and Jefferson County Board of Health) resides in Jefferson County, KY which is in the Louisville division of the Western District of Kentucky. <3> Therefore, if all defendants reside in Kentucky, venue would be said Louisville division pursuant to 28 U.S.C. 1391(b)(1). If not 28 U.S.C. 1391(b)(2) applies and venue would still be the Louis-

ville Division because all the events giving rise to this claim occurred in that judicial district.

Part 4 - ELEMENTS OF CAUSE OF ACTION

Persons acting under color of state law regulation,etc.

3. Defendant "Louisville and Jefferson County Board of Health" is a person within the meaning 42 U.S.C. 1983; is the employer of the individual defendants named herein; is responsible for acts they perform in their official capacities. Said defendant in acting through its employees or agents, acts under the color of law of the state of Kentucky.

4. Defendant "Jefferson County Kentucky" is a person within the meaning 42 U.S.C. 1983; is by virtue of KRS212.350(2) also the employer of the individual defendants and is responsible for acts they perform in their official capacities. Said defendant in acting through its employee's or agents, acts under the color of law of the state of Kentucky.

5. Defendant "Michael Humphrey" is an employee, enforcement officer, and a supervisory official of the Louisville and Jefferson County Board of Health. His actions described later herein were performed under color of regulation, custom, and usage of the Board of Health hence under the color of law, regulation, custom, and usage of the state of Kentucky.

6. Defendant "Robert Crabtree" is an employee, enforcement officer, and a supervisory official of the Louisville and <4> Jefferson County Board of Health. His actions described later herein were performed under color of regulation, custom, and usage of the Board of Health hence under the color of law, regulation, custom, and usage of the state of Kentucky.

7. Defendant "Milinda G. Rowe" is an employee and executive of the Louisville and Jefferson County Board of Health. Her actions described later herein were performed under color of regulation, custom, and usage of the Board of Health hence under the color of law, regulation, custom, and usage of the state of Kentucky.

8. Defendants "JOHN DOE's 1-100" are individuals who were/are employees or agents of the Louisville and Jefferson

County Board of Health. They are persons whose identity and number, currently unknown, will be the object of discovery and they are the persons who devised and implemented the administrative sham described herein. Said action was performed under the color of law, regulation, custom, and usage of the state of Kentucky.

Causing Deprivation of a Federal Right

9. The the "Louisville and Jefferson County Board of Health" (hereinafter Health Department) has promulgated regulations (Chapter VIII, Rule 4 of Health Code) which make it a criminal offense to occupy a dwelling in disrepair. The relevant sections are 804.604 and 804.611(b). We note this offense has two main elements (A) occupying and (B) disrepair and will therefore call it the AB offense. <5>

10. The Health Department has a policy of seeking to punish those who (A) occupy a dwelling unit which (B) is in disrepair and (C) fail to complete repairs within a reasonable period of time. We call this the ABC offense in recognition of its three elements. (We use the word offense because ABC is unwanted behavior, and do so even though the regulations do not define ABC as a criminal activity.)

11. Plaintiff asserts that, as a matter of law, the use of a sham of the nature and essence of that described in "Part 2" above is a violation of the accused's 6th amendment constitutional right to a trial. If this were not the case, the methods of "Part 2" could be used in regard to any offense, at any time, against any person, to deprive that person of a trial, thus rendering the promise of the 6th amendment meaningless.

12. Plaintiff asserts as a matter of fact, to be proven to the jury by a preponderance of evidence, that the regulations of the Health Department defining the AB offense, taken together with a policy of selective enforcement of that offense against those believed to have committed the ABC offense, constitute a sham of the nature and essence of the scheme described in "Part 2" above. The AB offense is a shame offense designed and used to punish the ABC offense while evading the constitutional necessity of proving the C element of the ABC offense. In comparison with "Part 1" above,

the common offense is "occupying [while repairs were not yet completed]." The unwanted act appears to be "failure to complete repairs of an occupied dwelling within a reasonable time." <6>

13. Defendant "Michael Humphrey", having, on January 29, 1997, initiated in Jefferson District Court of the State of Kentucky, a criminal prosecution charging that plaintiff violated the health code, pursued that charge to trial on January 20, 1998, obtaining conviction on the theory that plaintiff committed the AB offense.

14. Defendant "Michael Humphrey" pursued plaintiff through trial in order to punish plaintiff for "failure to complete repairs of an occupied dwelling within a time period he considered reasonable."

15. From (13) and (14) it follows that defendant Humphrey used the administrative sham described in (12) and therefore by the reasoning of (11) he deprived plaintiff of his constitutional right to a trial.

16. Defendant "Robert Crabtree" assisted and/or supervised Michael Humphrey in this prosecution using the AB offense and by this assistance was also a cause of the deprivation of plaintiff's right to trial.

17. Defendant "Milinda G. Rowe" and/or 1 or more of "JOHN DOE's 1-100" designed and/or implemented or they assisted in the design and/or implementation of the regulations and selective enforcement practice which comprise the administrative sham described herein. Furthermore they did so with an intent to evade the requirement of proving element C of the ABC activity they wished to punish. Alternatively they did so with the intent to evade the requirement of proving an element of some other activity/offense they wished to punish. Through these acts they were also a contributing cause of plaintiff's deprivation. <7>

Part 5 - DAMAGES AND RELIEF SOUGHT

18. As a consequence of defendants' actions plaintiff was damaged and seeks relief as follows:

19. Fine imposed for conviction of (13) above. $9800+costs. (This may be reduced or eliminated on appeal which is on going.)

20. Attorneys fees paid in the defense and appeal of the conviction of (13) above. $1700

21. Filing fees paid in the appeal of the conviction of (13) above. $305

22. Fair market value of the document preparation, legal research, and ProSe pleadings made in appeal of criminal conviction of (13) above. $24000 + on going amounts.

23. Stigma of a misdemeanor criminal conviction. $120000. (Conviction may be reversed on appeal which is on going.)

Plaintiff seeks injunctive relief protecting plaintiff from future uses of the sham offense prosecution.

Against the defendants jointly and severally, the plaintiff seeks expenses and attorneys' fees costs for this case.

Plaintiff herein demands a jury trial of all issues triable to a jury involved now or hereafter in the above cause.

Respectfully submitted,

_____

Robert L. Voit, ProSe
c/o David S. O'Brien
125 S. 6th St.
Louisville, KY 40202
(502) 587-7000

(entered July 14, 1998)

NO. 98-XX-0030 JEFFERSON CIRCUIT COURT
DIVISION THREE

ROBERT L. VOIT APPELLANT

v. OPINION AND ORDER

COMMONWEALTH OF KENTUCKY APPELLEE

****

This matter comes before the Court on appeal from the district court case styled Commonwealth of Kentucky v. Robert L. Voit, District Court No. 97M001819A. The judgment appealed from was entered on January 21, 1998. The Appellant, Robert Voit, filed Notice of Appeal on March 6, 1998. Pursuant to an extension, Appellant filed a pro se Statement of Appeal on May 5, 1998.

The complaint against Appellant, Robert Voit, charged him with permitting a dwelling unit in disrepair to be occupied. At the close of the prosecutor's case, Appellant moved for directed verdict of acquittal on the grounds that the Commonwealth was insufficient to establish Appellant's guilt. The trial court denied this motion and the case went to the jury which found that the Appellant had violated Chapter VIII, Rule 4 of the Louisville and Jefferson County Board of Health Sanitary Code. The jury returned a guilty verdict for each day of the charged offense (totaling 98 days) and imposed the maximum fine of $100.00 per day for a total fine of $9800.00.

Appellant's first issue raised in his appeal is that the evidence was insufficient to prove the charged offense. He does not contend that the said premises were not in disrepair, but rather <1> Appellant claims that the Commonwealth introduced no evidence of the Appellant's ownership of the dwelling.

Relying upon three (3) sections of the Sanitary Code, §§804.611(b), 804.601(n), and 804.604, Appellant argues in his Statement of Appeal (pp.7-8) that "[i]f a dwelling unit has any of the maintenance defects of subsections a-m then 804.611(b) as applied to 804.604 defines three possible violations a person could commit: (V1) occupying as owner-occupant; (V2) letting to an-

other for occupancy; and (V3) occupying for the purpose of living therein." The Appellant incorrectly states that because the Criminal Complaint charged him with "permitting a dwelling unit to be occupied" that the Commonwealth must satisfy (V2), letting to another for occupancy (Statement of Appeal, p.8). However, the Appellant incorrectly analogizes the term "permitting" in the complaint with "letting to another for occupancy" as stated in (V2). The Commonwealth never charged the Appellant with leasing the premises to another person for occupancy, but rather claimed that he lived there during the period of October 16, 1996 to January 23, 1997.

On the contrary, Appellant violated §804.604 (V3) which forbids "occupy[ing] for the purpose of living therein." The Commonwealth introduced sufficient proof of occupancy in the form of testimony by Michael Humphrey, Environmental Specialist with the Jefferson County Board of Health. Humphrey testified that on one of his visits, Appellant admitted to him that he occupied the said premises, and was responsible for making repairs to the premises (VCR Tape 308 1/20/98, 16:54:10 - 17:45:59). Based on this evidence and other evidence presented by the prosecution, and the Appellant's inability to deny the disrepair of the property, the trial judge properly submitted the case to the jury.

Appellant also refers to §804.601(n). However, this section is entitled "Definitions" and <2> subsection (n) defines the word "Owner". This definition is inapplicable because the Commonwealth did not charge the Appellant as owner in the Criminal Complaint. The complaint alleged that the Appellant violated the Sanitary Code "by permitting a dwelling unit to be occupied which does not comply with the [maintenance requirements] ." Therefore, §804.604 is the properly applicable section of the Sanitary Code whereas §804.601(n) is not.

Finally, Appellant contends that "permitting a dwelling unit to be occupied," as alleged in the Criminal Complaint, is different from §804.604 (V3) "occupying for the purposes of living therein." Appellant argues that the Commonwealth would have to show that he was the owner of the property before showing that he could "permit" someone to occupy the property. However, the use of the word "permit" does not mean that the permission was authorized,

but merely that such action was allowed to occur. Regardless of whether Appellant allowed another person or himself to occupy said premises, both acts are in violation of the ordinance. "Permit" is not solely limited to an act which affects another person. By Appellant "occupying" the premises, he was "permitting" himself to occupy such premises. Thus, the Criminal Complaint sufficiently charged Appellant and Appellant's contrary argument is without merit.

The next issue which the Appellant argues is that the trial court violated his rights when it prohibited him from cross-examining a witness, Michael Humphrey. However, Appellant had the assistance of counsel during the trial who cross-examined each of the prosecution's witnesses. The trial court sustained the Commonwealth's objection to defense counsel's request that Appellant be permitted to cross examine Michael Humphrey because he had already been thoroughly questioned by Appellant's counsel. It has been recognized in Kentucky that a trial judge has a wide range of discretion as to the scope and duration of cross-examination and he has <3> the authority to place reasonable limits upon cross-examination. See Skruggs v. Commonwealth, Ky., 566 S.W.2d 405 (1978); Department of Highways v. Smith, Ky., 390 S.W.2d 194, 195(1965). In addition, the trial judge did allow Appellant and his counsel time to confer outside of court to ensure that any questions the Appellant had could he raised by his counsel. This prevented any prejudice to the Appellant by limiting the cross-examination.

Appellant also contends that the trial court failed to properly impose his sentence because he was offered no opportunity to present evidence of mitigating circumstances pursuant to RCr 11.02. However, during the jury trial the trial judge gave the Appellant and his counsel the opportunity to present such information. Appellant chose not put on a defense, but instead rested at the close of the Commonwealth's case in chief, and offered only a closing argument.

There is no separate penalty phase for an offense where a fine can be imposed. The Appellant should have known that once the jury deliberation began, if the jury found the Appellant guilty, that they would also determine his sentence at that time. The jury

instructions agreed upon by the parties included a range of possible fines and therefore any argument that the Appellant was unaware that the jury was also deciding punishment is not persuasive. Before releasing the jury, the judge also asked Appellant's counsel whether he had any additional information for the record and he responded in the negative. (VCR Tape 309A 1/21/98, 15:39:02). Any information which the Appellant wished to offer should have been introduced before the jury was released to deliberate. Finally, the judge asked for agreement that the judgment is final and entered as of that day (VCR Tape 309A 1/21/98, 15:39:11), and neither party objected. Appellant had many opportunities to present mitigating circumstances if he wished, but he failed to do so. He may not now use such failure as a successful ground for reversal on appeal.<4>

Appellant's final contention is that a statement was improperly admitted into evidence. The statement in question is the direct testimony offered by Michael Humphrey regarding his conversation with the Appellant concerning Appellant's occupancy of said premises. The Appellant argues that the statement is hearsay. However, the testimony falls under an exception to hearsay, an admission of a party, pursuant to KRE 801 A(b)(1), and is therefore properly admissible.

Upon review of the record, and being otherwise sufficiently advised, the Court enters the following Order:

ORDER

IT IS HEREBY ORDERED that the Judgment from District Court is hereby AFFIRMED.

s/ unreadable
WILLIAM E, MCANULTY, JUDGE
Jefferson Circuit Court
DATE ENTERED: 7/13/98

ENTERED IN COURT
JUL 14 1998
TONY MILLER, CLERK
By s/ Sing? Deputy Clerk